

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NOS. 134-140, FOOD AND DRUGS ACT.

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(N. J. 134.)

MISBRANDING OF "BUCHU GIN."

In accordance with the provisions of section 4 of the Food and Drugs Act of June 30, 1906, and of regulation 6 of the rules and regulations for the enforcement of the act, notice is given of the judgment of the court in the case of the United States *v.* 10 cases of Baird-Daniels Co.'s Distilled Buchu Gin, a proceeding of libel under section 10 of the aforesaid act for seizure and condemnation of said 10 cases of buchu gin lately pending, and finally determined on August 11, 1909, in the supreme court of the District of Columbia by rendition of a decree of condemnation and forfeiture hereinafter fully set out.

A sample of gin (I. S. No. 21119-a) labeled and branded "Baird-Daniels Co.'s Distilled Buchu Gin. Without an equal for kidney and bladder troubles" had been analyzed in the Bureau of Chemistry of the United States Department of Agriculture and found to contain 38.66 per cent of alcohol and a mere negligible quantity of buchu when, on or about March 24, 1909, an inspector of said Department found in the possession of A. E. Beitzel, 401 O street NW., Washington, D. C., 10 cases of the aforesaid gin, each case containing bottles inclosed in cartons and all being labeled and branded "Baird-Daniels Co.'s Distilled Buchu Gin. Without an equal for kidney and bladder troubles," said 10 cases of gin having been shipped on March 15, 1909, from New York, N. Y., by Baird-Daniels Company to the said Beitzel, Washington, D. C. From the aforesaid analysis

it appeared that the gin was misbranded within the meaning of section 8 of the act, for the reasons that it failed to bear a statement on the labels of the quantity or proportion of alcohol contained therein and because the representation and statement on the labels that it contained buchu and was "without an equal for kidney and bladder troubles" were misleading, deceptive, and false in that by the use of the name "buchu," particularly in connection with the statement that the preparation was without an equal for kidney and bladder troubles, it was intended that the purchaser should believe that the article contained at least a sufficient quantity of buchu to produce a therapeutic effect, while in fact there was so small a quantity of buchu present that the preparation could have no resultant medicinal efficacy, and the preparation was not without an equal for kidney and bladder troubles.

Accordingly, on March 25, 1909, the Secretary of Agriculture notified the United States attorney for the District of Columbia that the aforesaid 10 cases of buchu gin were then in the possession of A. E. Beitzel in said District, having been shipped as above stated, and that they were misbranded within the meaning of the act. (F. & D. No. 537.) On March 26, 1909, the United States attorney filed a libel in the supreme court of the District of Columbia, praying seizure, condemnation, and forfeiture of the said gin, wherein the misbranding of the article is fully set out as follows:

II.

Your libellant represents to the court that in the city of Washington, District of Columbia, and within the jurisdiction of this honorable court, are certain articles of drug and food; that is to say, a certain liquid preparation intended to be used both as a cure and mitigation of disease of man and as a food and drug by man, of the particular description following: Ten cases, more or less, each case containing, to wit, certain bottles of the said liquid preparation, each case and each bottle thereof bearing a certain brand and label upon which is printed the following: "Baird-Daniels Co.'s Distilled Buchu Gin. Without an equal for kidney and bladder troubles;" said cases and the bottles contained therein, of the said liquid preparation, being now in the possession of and held by a certain A. E. Beitzel, at premises Number 401 O street northwest, in the said city of Washington, in the District aforesaid.

III.

Your libellant further represents that the said ten cases, more or less, and each of the bottles contained in each of said cases as aforesaid, of said liquid preparation, are illegally held within the jurisdiction of this honorable court for that the same are misbranded within the meaning and intent and in violation of the said act of Congress approved June 30, A. D. 1906, and are liable to condemnation and confiscable as provided therein, for the reasons following:

a. In that the said liquid preparation so contained in said cases and bottles contains a large quantity of alcohol, in the proportion of, to wit, thirty-eight and sixty-six one-hundredths per cent of the volume of said liquid preparation so contained in said cases and bottles; but the said cases and bottles so containing

the said liquid preparation fail to bear any statement, upon either said cases or said bottles, of the proportion and quantity of alcohol so contained in said liquid preparation, as required by the said act of Congress approved June 30, A. D. 1906.

b. In that the labels by which each of the said cases and bottles of said liquid preparation are branded as aforesaid, bearing the printed matter aforesaid, namely: "Baird-Daniels Co.'s Distilled Buchu Gin. Without an equal for kidney and bladder troubles," signify and import, by the use of the word "buchu" as a part of the style and name of said liquid preparation, that the said liquid preparation contains a drug and medicinal product commonly known as buchu, and thereby that the said drug is present in the said liquid preparation in a sufficient quantity and proportion to be an effective medicinal constituent and agency in the use of the said liquid preparation; whereas in fact, the quantity and proportion of buchu contained in said liquid preparation is so small as to be non-effective as a medicinal agency in the use of said liquid preparation. The said word "buchu" so appearing upon said labels is therefore false and misleading, tending to deceive the persons purchasing and using said liquid preparation.

Your libellant further charges that the printed matter so appearing upon each of the labels on each of the said cases and bottles of said liquid preparation is further false and misleading, tending to deceive the purchaser thereof, by reason of the use of the statement, to wit, "Without an equal for kidney and bladder troubles," in that such statement represents and signifies that the said liquid preparation is a superior and unequalled remedy for disorders and diseases of the kidneys and bladder, whereas in fact the said liquid preparation is not a superior and unequalled remedy for disorders and diseases of the kidneys and bladder.

Your libellant further represents that the printed matter contained on the labels as aforesaid, and read and considered as a whole, represents that the said liquid preparation is an effective remedy for kidney and bladder troubles by reason of the medicinal quality of the drug buchu so represented to be contained in said liquid preparation, whereas by reason of the insufficient quantity and proportion of buchu, as well as by reason of the absence of any special remedial qualities of the said liquid preparation, the said printed matter is false and misleading, in violation of the said act of Congress approved June 30, A. D. 1906.

The case having come on for final hearing on August 11, 1909, and the said A. E. Beitzel, claimant of the gin, having failed to answer the allegations of the libel, but consenting to a decree of condemnation and forfeiture, the court rendered its decree in substance and in form as follows:

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, HOLDING A DISTRICT COURT.

UNITED STATES OF AMERICA,	}	District docket No. 808.
<i>Libellant,</i>		
<i>v.</i>		
TEN CASES OF A FOOD AND DRUG		
labelled and known as "Baird-		
Daniels Co.'s Distilled Buchu		
Gin."		

Upon motion of the libellant for judgment of condemnation of the articles seized herein, and it appearing to the court that upon the libel filed herein on

March 26, A. D. 1909, a warrant of arrest was duly issued, under which the marshal of the United States for the District of Columbia has seized nine cases of the liquid preparation described in said libel and known as Baird-Daniels Co.'s Distilled Buchu Gin, which are inventoried as of the value of fifty-four dollars, as shown by the return of the marshal filed herein; and it appearing to the court that proper notice and citation has been duly made and served, and that the claimant, A. E. Beitzel, has duly appeared herein, but that no answer has been filed to the libel within the time provided, and no objection being signified to the court, it is this 11th day of August, A. D. 1909,

Adjudged, ordered and decreed that the said nine cases, and each and all of the bottles of said liquid preparation contained therein, seized by the marshal herein as aforesaid, and now in his custody, be, and they hereby are, declared to be misbranded in violation of the Food and Drugs Act approved June 30, 1906, in manner and form as more particularly set forth in the libel filed herein.

And the said A. E. Beitzel, claimant herein, having moved the court for the return and delivery to him of the articles seized herein, upon the payment of the costs of the proceedings herein, and the execution and delivery of a good and sufficient bond, as provided by section 10 of the said act of Congress, and no objection to the contrary being made, it is further adjudged that upon the said A. E. Beitzel's paying the costs of these proceedings and executing and delivering to said marshal a good and sufficient bond in the penal sum of five hundred dollars (\$500), conditioned that the said cases, bottles, and packages, so seized as aforesaid, and the contents thereof, shall not be further held, used, or circulated with the branding and statements in use at the time of the seizure, as set forth in said libel, and shall not otherwise violate the provisions of the Food and Drugs Act approved June 30, 1906, with respect to said articles, the said marshal shall deliver the aforesaid cases, bottles, and packages, and the contents thereof, to the said claimant, in lieu of the disposition thereof by sale or destruction, as required by said act, approved June 30, 1906, as aforesaid.

By the court.

ASHLEY M. GOULD, *Justice.*

We consent:

WOLF & ROSENBERG,
Attorneys for Claimant.

The said claimant, Beitzel, having complied with the terms of the aforesaid decree and section 10 of the Food and Drugs Act of June 30, 1906, the said 9 cases of buchu gin were redelivered to him.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *January 10, 1910.*

(N. J. 135.)

MISBRANDING OF VANILLA EXTRACT.

In accordance with the provisions of section 4 of the Food and Drugs Act of June 30, 1906, and of regulation 6 of the rules and regulations for the enforcement of the act, notice is given that on the 24th day of April, 1909, in the district court of the United States for the district of Maryland, in a prosecution by the United States against McCormick & Co., of Baltimore, Md., a body corporate, for violation of section 2 of the aforesaid act, in shipping and delivering